

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2018-2-E

| | | |
|--------------------------------------|---|--------------------------------|
| IN RE: |) | SCE&G’S RESPONSE IN |
| |) | OPPOSITION TO |
| Annual Review of Base Rates for Fuel |) | THE SOUTH CAROLINA |
| Costs for South Carolina Electric & |) | SOLAR BUSINESS |
| Gas Company |) | ALLIANCE’S MOTION TO |
| _____ |) | BIFURCATE ISSUES |

Pursuant to 10 S.C. Code Ann. Reg. § 103-829(A) (2012), South Carolina Electric & Gas Company (“SCE&G” or the “Company”) herein responds in opposition to the Motion to Bifurcate Issues (“Motion”) filed by the South Carolina Solar Business Alliance (“SCSBA”). For the reasons discussed below, the Motion should be denied. In the alternative and if the Motion is granted, SCE&G requests that the Commission instruct the Company not to execute any additional purchase power agreements with solar developers until the Commission issues an order setting SCE&G’s avoided costs at an appropriate level, in order to maintain the status quo and prevent the Company’s customers from having to bear the cost of paying excessive avoided costs while these matters are litigated.

Background

In connection with its 2016 annual fuel proceeding, to which SCSBA was a party, SCE&G sought approval of Rate PR-2 that reflects SCE&G’s long-run avoided cost rates to be used in conjunction with negotiating long-term contracts

with qualifying cogeneration facilities. The Commission approved the proposed rate and determined that it was reasonable for the Company to update “Rate PR-2 twice a year or more often as may be necessary.” Order No. 2016-297, dated April 29, 2016, issued in Docket No. 2016-2-E at 26; *see also* Order No. 2017-246, dated April 27, 2017, issued in Docket No. 2017-2-E at 22.

On December 22, 2017, SCE&G notified the Commission that the Company was evaluating its resource plan and intended to implement changes to its avoided cost calculation to determine the appropriate avoided capacity costs for its Rate PR-2 tariff. SCE&G therefore informed the Commission that it did not believe it would be prudent to update its Rate PR-2 at that time and requested a waiver of the requirement to update its Rate PR-2 twice a year. SCSBA opposed this request;¹ however, the Commission agreed with the Company finding that addressing these issues in the fuel case would promote judicial economy and allow them to be addressed expeditiously. *See* Order No. 2018-55, dated January 24, 2018, issued in Docket No. 2017-2-E. The Commission also required the Company to put its proposed Rate PR-2 in prefiled testimony as part of its 2018 fuel proceeding. SCSBA did not petition for reconsideration or rehearing or otherwise challenge this Order.

¹ It is noteworthy that, on December 20, 2016, SCE&G filed with the Commission its proposed update to Rate PR-2 in accordance with Order No. 2016-297. SCSBA responded by filing a complaint, which was docketed in Docket No. 2017-29-E, contesting the approval of the updated Rate PR-2 because the proposed rate reduced avoided cost capacity payments. It therefore is apparent that SCSBA’s challenges to SCE&G’s Rate PR-2 updates—including both the update in 2016 and 2017—are solely based upon its interest in keeping the rates as high as possible for as long as possible, even though this means SCE&G’s customers will unreasonably bear the burden of the excessive costs that will result.

In compliance with Order No. 2018-55, SCE&G included its proposed changes to Rate PR-2 in its 2018 fuel proceeding prefiled direct testimony. On March 7, 2018, SCSBA requested that the testimony deadlines and hearing date be extended because the Company filed testimony “addressing not only the fuel case, but including the issues of PR-2 rate update and avoided costs.”² See Exhibit A, Docket No. 2018-2-E, Document No. 274972, SCSBA Email Communications dated March 7 and 8, 2018. SCE&G and SCSBA thereafter resolved these issues with the Company agreeing to an accelerated deadline to respond to SCSBA’s discovery demands and to a one-day extension to all remaining testimony deadlines, and with SCSBA withdrawing its extension request (“Agreement”). See Exhibit B, Email Correspondence Between Parties. The Commission approved the parties’ Agreement and granted the one-day extension of time for prefiled testimony. Order No. 2018-178, dated March 14, 2018, issued in Docket No. 2018-2-E.

Despite its agreement to maintain the current hearing schedule and to proceed with prefiling direct testimony in this matter, SCSBA filed the instant Motion on March 22, 2018. Therein, SCSBA asserts that, if it is “forced to adhere to the pre-filing deadlines in place in this Docket, [it] will be deprived of [its] due process rights to be heard on” the proposed update to Rate PR-2, the proposed

² But see S.C. Code Ann. § 58-27-865(A)(2)(c) (2015). (“fuel costs related to purchased power’ ... **shall include ... avoided costs** under ... PURPA.”) (emphasis added); Order No. 2016-297 at 25 (“The Commission agrees with SCE&G that, in accordance with Act No. 236 of 2014, any adjustments to the PR-1 or PR-2 tariffs **should be considered as part the Company’s annual fuel proceeding.**”) (emphasis added).

changes in the avoided cost methodology, and other annual fuel case issues. Motion at 1.

Discussion

SCSBA's request is without merit and the Motion should be denied for several reasons.

First, by entering into the Agreement, SCSBA has waived any right to seek the relief requested in the motion. As reflected on page 1 of Exhibit A, counsel for SCSBA averred on March 8, 2018, that "the Company's inclusion of the PR-2 Rate update and the Company's changes to its avoided cost methodology, along with the normal fuel case issues, make the thirty day response time [for SCSBA's prefiled testimony] unworkable, unfair and **constitutes a lack of due process.**" (Emphasis added). While SCE&G disputes these contentions, SCSBA voluntarily negotiated an agreement with SCE&G and all parties to resolve these issues. Specifically, SCSBA agreed that, if SCE&G expedited its response to SCSBA's discovery requests, a one-day extension in the deadline to prefile its direct testimony would be adequate to meet its needs. SCSBA cannot now renege on its agreement, which was approved by the Commission, and claim that the process to which it specifically agreed somehow now results in a violation of its due process rights. *Cf. Arnold v. Yarborough*, 281 S.C. 570, 572, 316 S.E.2d 416, 417 (Ct. App. 1984) ("Acts of an attorney are directly attributable to and binding upon the client. Absent fraud or mistake, where attorneys of record for a party agree to settle a case, the party cannot later repudiate the agreement.") (internal citations omitted);

Zaman v. S.C. State Bd. of Med. Exam'rs, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) (holding a party cannot complain of a violation of due process if the party has recourse to a constitutionally sufficient administrative procedure, but merely fails to take advantage of it).

SCSBA also failed to challenge the Commission's prior decision that the Company's proposed changes to the avoided cost methodology and updates to Rate PR-2 should be considered in the 2018 fuel docket. *See* Order No. 2018-55. Pursuant to S.C. Code Ann. § 58-27-2310, "[n]o right of appeal accrues to vacate or set aside, either in whole or in part, an order of the commission, except an order on a rehearing, unless a petition to the commission for a rehearing is filed and refused or considered refused because of the commission's failure to act within twenty days." Because SCSBA did not petition the Commission to reconsider its decision authorizing SCE&G to revise its avoided cost methodology and Rate PR-2 in the 2018 fuel docket, it is collaterally estopped from seeking in its Motion the same relief previously denied in Order No. 2018-55. *See Bennett v. S.C. Dep't of Corrections*, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991) ("This Court has repeatedly held that under the doctrines of *res judicata* and collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action.").

Furthermore, SCSBA's protestations that it has not had adequate time to consider the issues in this matter are disingenuous. SCSBA has been a participant in a number of prior fuel dockets and related proceedings and therefore was fully

aware of the issues that would be addressed in this fuel proceeding.³ Moreover, the Commission initiated Docket No. 2018-2-E on October 4, 2017, and in doing so, issued a Notice of Hearing and Prefile Testimony Deadlines (“Notice of Hearing”). By December 15, 2017, SCE&G had timely provided the Commission’s Notice of Hearing to all its electric customers and had also caused the Notice of Hearing to be published in newspapers throughout SCE&G’s electric service territory. The Notice of Hearing explicitly states that the avoided costs incurred by the Company will be addressed in the fuel proceeding. SCSBA has known for years that SCE&G’s avoided costs are set forth in its Rate PR-2 and that SCE&G updates its PR-2 Rate each year during the fuel proceeding. *See* Dockets No. 2016-2-E and 2017-2-E. Those prior dockets demonstrate that “the pre-filing deadlines in place in this Docket” are more than adequate to provide parties with the right to be heard on “[t]he issues of (i) SCE&G’s PR-2 Rate Update (ii) SCE&G’s change in its avoided costs methodology and (iii) the issues inherent in SCE&G’s annual fuel case.” Motion at 1-2.⁴ Accordingly, SCSBA’s claim that the Commission’s “accommodation”

³ As required by S.C. Code Ann. § 58-27-865 (2015), the Commission conducts an annual review of SCE&G’s fuel purchasing practices and policies and determines whether any adjustment in the fuel cost recovery factors is necessary and reasonable. Upon information and belief, for at least the last 20 years, the Commission has scheduled prefiled testimony deadlines and the hearings for the Company’s annual reviews in April of each year so that the new fuel cost recovery factors can become effective with SCE&G’s first billing cycle for May of that year. Accordingly, the schedule for the Company’s annual review of its fuel costs is well established and known to all parties that routinely participate in these proceedings, including SCSBA.

⁴ SCE&G also notes that, on March 22, 2018, SCSBA prefiled direct testimony of its witness Dr. Ben Johnson, which consisted of 129 pages of testimony and 12 pages of exhibits. *Compare* Exhibit A at 1 (complaining that the prefiled direct testimony and exhibits of the Company’s **seven** witnesses was 172 pages in length). In his direct

of SCE&G's December 22, 2017 request for a waiver will deprive it of its due process rights to be heard on these issues is inaccurate and misleading.

In addition, the inclusion of avoided costs and Rate PR-2 updates in this docket is not the result of SCE&G requesting a waiver to update its avoided costs. Rather, it is South Carolina law and specifically, Act 236 of 2014, which requires that avoided costs be addressed in SCE&G's fuel proceeding, and Commission Order No. 2016-297, in which the Commission agreed with SCE&G that, "in accordance with Act No. 236 of 2014, any adjustments to the PR-1 or PR-2 tariffs **should be considered as part the Company's annual fuel proceeding.**" (emphasis added). *See also* S.C. Code Ann. § 58-27-865(A)(2)(c) (2015). ("fuel costs related to purchased power' ... **shall include ... avoided costs** under ... PURPA.") (emphasis added). Accordingly, SCSBA has known since June 2014, that avoided costs will be addressed in SCE&G's annual fuel proceeding and has known since April 2016 that updates to the PR-2 tariff would be included as part of the Company's annual fuel proceeding.

Setting the statute and Order No. 2016-297 aside, however, on January 5, 2018, and as discussed previously, SCSBA opposed SCE&G's December 22, 2017 request for a waiver to update its avoided cost. On January 24, 2018, the Commission directly addressed SCE&G's request and SCSBA's opposition in Order No. 2018-55 ruling that "[c]urrent uncertainties with SCE&G make it appropriate

testimony, Dr. Johnson addresses the Company's avoided cost methodology, the updated Rate PR-2, and other issues related to fuel costs. Accordingly, SCSBA appears to have had no difficulty abiding by the deadlines imposed by the Commission.

to address [SCE&G's update of Rate PR-2] in the context of the fuel case in April.” Moreover, SCSBA ignores the fact that the Commission agreed with the suggestion of the South Carolina Coastal Conservation League, who also opposed SCE&G's waiver request, that SCE&G be required to address its proposed avoided costs in its prefiled testimony in the fuel proceeding.

SCSBA also had more than sufficient time to conduct discovery regarding these issues about which it now complains. The Commission informed the public through the Notice of Hearing that any person who wishes to participate in this docket had until January 25, 2018, to file a Petition to Intervene. SCSBA filed its Petition to Intervene on January 23, 2018, demonstrating that it had read and understood the Notice of Hearing. And, again, SCSBA knew by way of Order No. 2018-55 that SCE&G would include its updated avoided cost rate in its prefiled testimony. Despite its right to engage in discovery on these matters, however, SCSBA delayed in submitting any discovery requests to the Company until March 2, 2018. To now claim that its witness has been “unable to provide comprehensive, responsive Testimony on the [issues] in the time allowed for his Testimony preparation,” Motion at 2, is untenable and demonstrates that its request is nothing more than an attempt to cure its poor planning in this matter. *See also* fn.4, *supra*.

Finally, granting SCSBA's request would effectively delay the implementation of SCE&G's updated fuel rates well beyond the date proposed by the Company and historically allowed by the Commission. For years, SCE&G has implemented new fuel rates beginning with its first billing cycle in May. As

discussed above and required by statute and Commission orders, these fuel rates include the Company's avoided costs and updates to the Company's Rate PR-2. Thus, "bifurcating" these issues into two separate proceedings effectively would delay implementing the necessary updates to Rate PR-2 and would require SCE&G to continue entering into power purchase agreements, based on stale avoided costs until the conclusion of the "bifurcated" proceeding. As a past participant in the Company's prior fuel dockets, SCSBA therefore knows its request will be disruptive and has not set forth any basis, much less a sufficient one, for such relief, other than its unilateral failure to meaningfully participate in this matter in a timely matter.

Although SCE&G believes SCSBA's request is without merit and should be denied for the reasons discussed above, if the Commission decides to grant the Motion and bifurcate the proceeding, the Company alternatively requests that Commission immediately suspend the existing Rate PR-2 and instruct the Company not to execute any additional purchase power agreements with solar developers until the Commission issues an order setting SCE&G's avoided costs at an appropriate level. Such an order would maintain the status quo and therefore prevent SCE&G's customers from having to bear the cost of paying excessive avoided costs to SCSBA members while these matters are litigated.

Conclusion

For the reasons stated above, SCE&G respectfully requests that the Commission deny SCSBA's Motion to Bifurcate. Alternatively and in the event the Commission grants the Motion, SCE&G requests that the Commission issue an order immediately suspending the Company's Rate PR-2 and instructing the Company not to execute any additional purchase power agreements with solar developers until the Commission issues an order setting SCE&G's avoided costs at an appropriate level. SCE&G also requests that the Commission grant such other and further relief as is just and proper.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

s/Benjamin P. Mustian
K. Chad Burgess, Esquire
Matthew Gissendanner, Esquire
Mail Code C222
220 Operation Way
Cayce, SC 29033-3701
Telephone: (803) 217-8141
Facsimile: (803) 217-7931
chad.burgess@scana.com
matthew.gissendanner@scana.com

Mitchell Willoughby
Benjamin P. Mustian
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
PO Box 8416
Columbia, SC 29202-8416
Telephone: (803) 252-3300
Facsimile: (803) 256-8062
mwilloughby@willoughbyhoefer.com
bmustian@willoughbyhoefer.com

Attorneys for
South Carolina Electric & Gas Company

Columbia, South Carolina
April 2, 2018

Easterling, Deborah

274972

From: Butler, David
Sent: Thursday, March 08, 2018 4:01 PM
To: Easterling, Deborah
Cc: Schmieding, Janice
Subject: FW: Docket 2018-2-E - Extension of Time to File Responsive Testimony

POSTED
3-8-18de

SA✓

Deb: Please put this memo in Docket File. Janice, this is a memo relating to the agenda item under Docket No. 2018-2-E.
Thanks,
David B.

RECEIVED

MAR 08 2018

PSC SC
MAIL / DMS

From: Carrie Schurg [mailto:caschurg@AustinRogersPA.com]
Sent: Thursday, March 08, 2018 3:41 PM
To: Butler, David <David.Butler@psc.sc.gov>
Cc: Benjamin Mustian <bmustian@willoughbyhoefer.com>; Bateman, Andrew <abateman@regstaff.sc.gov>; Pittman, Jenny <jpittman@regstaff.sc.gov>; alex@shissiaslawfirm.com; Scott Elliott <sellott@elliottlaw.us>; Bholman@selcsc.org; Tim Rogers <tfrgers@AustinRogersPA.com>; Matthew Gissendanner <matthew.gissendanner@scana.com>; ejones@selcsc.org; Richard Whitt <rlwhitt@austinrogerspa.com>; K. Chad Burgess <chad.burgess@scana.com>
Subject: Docket 2018-2-E - Extension of Time to File Responsive Testimony

This email was dictated by Richard Whitt:

David:

This Reply addresses the Company's response to SCSBA's and Southern Current's request for modification of filing timelines in Docket 2018-2-E. SCSBA and Southern Current's reply follows, *seriatim*:

Procedural Posture of Case Relates to the Company's Waiver Request.

A prior Order of this Commission required the Company to update its PR-2 Rate during the month of December, 2017. The Company filed a Waiver Request of that filing on December 22, 2017.

The Company is well aware that its last December PR-2 Rate update filing (December, 2016), lead to intervention and the Company's ultimate abandonment of the Company's proposed December, 2016 PR-2 Rate update. Obviously, had the Company made its December, 2017 PR-2 Rate update filing, as required by a previous Order of this Commission, there would have been intervention and scrutiny of its PR-2 Rate. By the Company moving the PR-2 Rate update into its Fuel case, the Company avoided stand-alone intervention in the PR-2 Rate update filing, as occurred in the Company's December, 2016 PR-2 Rate update.

As is set forth below, the Company's inclusion of the PR-2 Rate update and the Company's changes to its avoided costs methodology, along with the normal fuel case issues, make the thirty day response time for Intervenor's unworkable, unfair and constitutes a lack of due process.

Facts Concerning Intervenor's Time to Respond.

- The Company's filing of Direct Testimony and Exhibits included the Testimony and Exhibits of seven Witnesses running 172 pages in length.
- The Company did not file and serve its Direct Testimony and Exhibits on Intervenor's, which was due to be filed with this Commission on February 23, 2018, until after 5 p.m., on that Friday. [Therefore Intervenor's were not in receipt of the Company's Direct Testimony and Exhibits until after the close of business on February 23, 2018. With the weekend days following the after business hours filing by the Company on Friday, as a practical matter, Intervenor's did not have access to the 172 pages of Company's Direct Testimony and Exhibits until, sometime

on Monday, February 26, 2018. The filing of the Company's Direct Testimony and Exhibits after the close of business on Friday, precluded Intervenor's from having time to review the Company's Direct Testimony and Exhibits on Friday and over the weekend, thereby depriving the intervenors of three days of response time.

- With the Intervenor's not having access to the Company's Direct Testimony and Exhibits, until Monday, February 26, 2018, Intervenor's would have had to draft and serve their Discovery by the close of business on Friday, March 2, 2018, which is four days after the date of the Intervenor's receipt of the Company's Direct Testimony and Exhibits.
- In four days' time after the Intervenor's date of receipt of the Company's Direct Testimony and Exhibits, the Intervenor's could not reasonably receive and review 172 pages of Direct Testimony and Exhibits and secure the services of an Expert Witness to review the lengthy Direct Testimony and Exhibits of the Company. My client's retained an Expert on March 7, 2018. The short period of time allowed Intervenor's for review and response to (i) the Company's voluminous rate case filing (ii) the Company's "...changes to certain aspects of [the Company's] avoided cost calculation." and (iii) the Company's delayed PR-2 Rate update, is insufficient for due process and an Intervenor's' reasonable response.

The Company's Reference to Suspending its PR-2 Rate.

The Company's reference to suspension of the PR-2 Rate would negatively affect solar development in South Carolina and is clearly a punitive suggestion because the Company wishes to have this Commission to decide (i) the Company's fuel case (ii) changes to the Company's avoided costs methodology and (iii) the company's required PR-2 Rate update from December, 2017, without adequate time for Intervenor's review and response to the same.

Our Request for Relief.

In the spirit of cooperation, we modify our request for an extension of time to respond to the Company's Direct Testimony and Exhibits, of thirty days extension to the original response date of March 22, 2018, or in the alternative, we request leave to file supplemental Testimony, after we receive responses to our First Request for Production, which will be e-filed and served in the morning.

Regards,
Richard Whitt.

From: Richard Whitt
Sent: Thursday, March 08, 2018 7:32 AM
To: BURGESS, KENNETH CHAD <chad.burgess@scana.com>
Cc: F. David Butler (david.butler@psc.sc.gov) <david.butler@psc.sc.gov>; bmustian@willoughbyhoefer.com; abateman@regstaff.sc.gov; jpittman@regstaff.sc.gov; alex@shissiaslawfirm.com; selliott@elliottlaw.us; Bholman@selcsc.org; Tim Rogers <tfrogers@AustinRogersPA.com>; Carrie Schurg <caschurg@AustinRogersPA.com>; GISSENDANNER, MATTHEW W <MATTHEW.GISSENDANNER@scana.com>
Subject: Re: Docket 2018-2-E - Extension of Time to File Responsive Testimony

David:

We plan to respond by COB today.

Regards,
Richard Whitt.

Sent from my iPhone - Richard L. Whitt

On Mar 7, 2018, at 5:34 PM, BURGESS, KENNETH CHAD <chad.burgess@scana.com> wrote:

Dear David –

SCE&G is in receipt of the South Carolina Solar Business Alliance, Inc. and Southern Current LLC's (together "Solar Entities") request for a 90 day extension of time to submit its pre-filed direct testimony in the above-referenced docket. For the reasons below, this request should be denied.

As the Commission is aware, the Solar Entities have been past participants in prior fuel dockets, and as past participants they are fully aware of the issues to be addressed in a fuel proceeding. To claim that SCE&G's request for a waiver to adjust its avoided costs in December 2017, is the mechanism by which the Company is injecting "additional issues" in this proceeding is inaccurate. The Commission initiated Docket No. 2018-2-E on October 4, 2017, and in doing so, issued a Notice of Hearing and Prefile Testimony Deadlines ("Notice of Hearing"). By December 15, 2017, SCE&G had timely provided the Commission's Notice of Hearing to all its electric customers and had also caused the Notice of Hearing to be published in newspapers throughout SCE&G's electric service territory. The Notice of Hearing explicitly states that the avoided costs incurred by the Company will be addressed in the fuel proceeding, and the Solar Entities have known for years that SCE&G's avoided costs are set forth in its "Rate Schedule PR-2." And, they have likewise known that SCE&G updates its PR-2 Rate each year during the fuel proceeding. See Dockets No. 2016-2-E and 2017-2-E. Those prior dockets demonstrate that "[t]he issues of the fuel case, plus the PR-2 rate update and avoided costs" are not "too complicated for the existing time frame."

Contrary to the Solar Entities' belief otherwise, the inclusion of avoided costs in this docket is not the result of SCE&G requesting a waiver to update its avoided costs; it is South Carolina law and specifically, Act 236, which requires that avoided costs be addressed in SCE&G's fuel proceeding. The Solar Entities have known since June 2014, that avoided costs will be addressed in SCE&G's annual fuel proceeding. Setting the statute aside, on January 5, 2018, the South Carolina Solar Business Alliance, Inc. opposed SCE&G's December 2017 request for a waiver to update its avoided cost, and on January 24, 2018, the Commission directly addressed SCE&G's request, and the Solar Entities' opposition in Order No. 2018-55. In that order, the Commission ruled that "[c]urrent uncertainties with SCE&G make it appropriate to address [SCE&G's request for a waiver] in the context of the fuel case in April." Moreover, the Solar Entities ignore the fact that the Commission agreed with the suggestion of the Coastal Conservation League, who also opposed SCE&G's waiver request, that SCE&G be required to address its proposed avoided costs in its prefiled testimony in the fuel proceeding. Ironically, the Coastal Conservation League, who strongly supports the Solar Entities' request for more time, appear to have forgotten that the Commission agreed with their suggestion.

With regard to the Solar Entities' claim that they need time to conduct discovery, this argument should be rejected. The Commission informed the public that any person who wishes to participate in this docket had until January 25, 2018, to file a Petition to Intervene. Southern Current, LLC filed its Petition to Intervene on January 22, 2018, and the South Carolina Business Alliance, Inc. filed its Petition to Intervene on January 23, 2018; they obviously had read and understood the Notice of Hearing. Moreover, the South Carolina Solar Business

Alliance (whose membership includes Southern Current) knew by way of Commission Order No. 2018-55 issued on January 25, 2018, that SCE&G would include its updated avoided cost rate in its prefiled testimony. Since that time, the Solar Entities have made no attempt whatsoever to conduct any discovery in this docket. It is their absolute right to not be active in this docket, but to wait until March 7, 2018, and then claim that they need time for discovery when they have made no attempt to conduct discovery is untenable. The Coastal Conservation League's "strong[] support" for the Solar Entities' request appears to be nothing more than their attempt to cure their poor planning in the service of discovery. More specifically, the Coastal Conservation League waited until March 6, 2018, to serve discovery upon SCE&G. By regulation, SCE&G's responses are due March 26, 2018, which is 4 days after the other parties' direct testimony is due. That the Solar Entities and the Coastal Conservation League have either not yet filed discovery or waited until this late date to file discovery is no fault of SCE&G and is not a sufficient basis to support a request for an extension of time.

Lastly, an extension of 90 days would push this proceeding well beyond the date by which SCE&G seeks to have its fuel rates implemented. For years, SCE&G has implemented its new fuel rates beginning with its first billing cycle in May. Again, as past participants, the Solar Entities know that their request is disruptive, and they have not provided an adequate basis for their disruption. Based on the foregoing, SCE&G objects to the Solar Entities' request. But in the event that the Solar Entities' request is granted, then SCE&G respectfully requests that the Commission immediately suspend its existing PR-2 rate and instruct SCE&G to not execute any additional purchase power agreements with solar developers until the Commission issues an order setting SCE&G's avoided costs at an appropriate level.

If you have any questions, please advise.

Chad

From: Carrie Schurg [<mailto:caschurg@AustinRogersPA.com>]

Sent: Wednesday, March 7, 2018 1:37 PM

To: F. David Butler (david.butler@psc.sc.gov) <david.butler@psc.sc.gov>

Cc: BURGESS, KENNETH CHAD <chad.burgess@scana.com>; bmustian@willoughbyhoefer.com; abateman@regstaff.sc.gov; jpittman@regstaff.sc.gov; alex@shissiaslawfirm.com; Richard Whitt <rlwhitt@AustinRogersPA.com>; selliott@elliottlaw.us; Bholman@selcsc.org; Tim Rogers <tfrogers@AustinRogersPA.com>

Subject: Docket 2018-2-E - Extension of Time to File Responsive Testimony

***This is an EXTERNAL email from Carrie Schurg (caschurg@austinrogerspa.com). Please do not click on a link or open any attachments unless you are confident it is from a trusted source.

This email was dictated by Richard Whitt:

David:

1. We represent the South Carolina Solar Business Alliance, Inc., and Southern Current LLC, in Docket 2018-2-E. I am addressing this request to you, because you have previously issued a Standing Hearing Officer Directive in this Docket.
2. As you know, SCE&G filed its Testimony on February 23, 2018, in Docket 2018-2-E, addressing not only the fuel case, but including the issues of PR-2 rate update and avoided costs. The inclusion of these two additional issues were as a result of SCE&G's request for a waiver, filed with this Commission on December 22, 2017.
3. Because these two additional, important issues were included in the Testimony, we are requesting that our March 22, 2018 Testimony deadline to be extended 90 days, or in the alternative, be held in abeyance until the parties have ample time to complete discovery requests and report back to you.
4. The issues of the fuel case, plus the PR-2 rate update and avoided costs, are too complicated for the existing time frame. Also, we need time for discovery requests to the Company, before we file Testimony.
5. All parties are copied hereon. Please advise, and this request is,

Respectfully Submitted,
Richard Whitt,
Timothy F. Rogers,
As Counsel for South Carolina Solar Business Alliance, Inc., and
Southern Current LLC.

From: Richard Whitt <rlwhitt@AustinRogersPA.com>
Sent: Monday, March 12, 2018 3:07 PM
To: BURGESS, KENNETH CHAD <chad.burgess@scana.com>
Cc: Blan Holman <bholman@selcsc.org>; Carrie Schurg <caschurg@AustinRogersPA.com>
Subject: Re: Expert Witness///Re: Docket 2018-2-E - Extension of Time to File Responsive Testimony

***This is an EXTERNAL email from Richard Whitt (rlwhitt@austinrogerspa.com). Please do not click on a link or open any attachments unless you are confident it is from a trusted source.

Chad:

Please let David know that we have resolved our issues. Thank you.

Regards,
Richard Whitt.

Sent from my iPhone - Richard L. Whitt

On Mar 12, 2018, at 9:52 AM, BURGESS, KENNETH CHAD <chad.burgess@scana.com> wrote:

Richard and Blan –

I have made inquiry of SCE&G, and the Company is unable to move the hearing date scheduled for April 10, 2018, to any of the dates that you requested.

Turning to discovery, SCE&G will provide each of you with additional compact discs that will contain SCE&G's remaining responses to ORS's Audit Information Requests as well as follow-up questions and answers. As you might expect, some of SCE&G's responses are confidential. In order to provide you with access to the Company's confidential information, SCE&G requires that you execute a confidentiality agreement. If you are willing to enter into such an agreement, then please let me know, and I'll provide a draft agreement to you for review and consideration. As for your remaining discovery demands, SCE&G is continuing to work quickly to meet the agreed upon March 16, 2018 deadline.

Lastly, we owe David Butler an update today, and I would like to state that we have resolved our issues with SCE&G agreeing to an accelerated deadline to respond to your client's discovery demands and that SCE&G is agreeable to extending all testimony deadlines by one day. Please let me know if you are in agreement with this statement.

If you have any questions or wish to discuss this matter further, please let me know.

Chad

From: Richard Whitt [<mailto:rlwhitt@AustinRogersPA.com>]
Sent: Friday, March 9, 2018 6:55 PM
To: Blan Holman <bholman@selcsc.org>
Cc: BURGESS, KENNETH CHAD <chad.burgess@scana.com>; Carrie Schurg <caschurg@AustinRogersPA.com>
Subject: Expert Witness///Re: Docket 2018-2-E - Extension of Time to File Responsive Testimony

***This is an EXTERNAL email from Richard Whitt (rlwhitt@austinrogerspa.com). Please do not click on a link or open any attachments unless you are confident it is from a trusted source.

Blan and Chad:

As stated... our expert , Dr. Ben Johnson, is booked for April 10. We would have to check his schedule for any other date.

Regards,
Richard Whitt.

Sent from my iPhone - Richard L. Whitt

On Mar 9, 2018, at 4:24 PM, Blan Holman <bholman@selcsc.org> wrote:

Thanks for this Chad and your earlier email.

If you would send that in, I'd appreciate it. We also represent Southern Alliance for Clean Energy, so please add that.

I've got queries into expert to verify that March 16/23 will work. I am hopeful that it will.

Blan Holman
Southern Environmental Law Center
463 King St. - Suite B
Charleston, SC 29403

p. 843 720 5270
www.southernenvironment.org

From: BURGESS, KENNETH CHAD [chad.burgess@scana.com]
Sent: Friday, March 09, 2018 4:20 PM
To: Richard Whitt; Blan Holman
Subject: FW: Docket 2018-2-E - Extension of Time to File Responsive Testimony

Richard and Blan –

We owe David Butler a response. I suggest the following:

Dear David –

Counsel for SCE&G, the Solar Business Alliance and the Coastal Conservation League have been engaged in discussions in an attempt to resolve their issues. Our conversations are on-going, and we anticipate being able to provide you with more information on Monday.

If you have any questions, please advise.

Please let me know if you are okay with me sending this to David, or if you prefer to send it under your signature, that would be acceptable to me.

Chad

From: Butler, David [<mailto:David.Butler@psc.sc.gov>]
Sent: Thursday, March 8, 2018 4:54 PM
To: Carrie Schurg <caschurg@AustinRogersPA.com>
Cc: Benjamin Mustian <bmustian@willoughbyhoefer.com>; Bateman, Andrew <abateman@regstaff.sc.gov>; Pittman, Jenny <jpittman@regstaff.sc.gov>; alex@shissiaslawfirm.com; Scott Elliott <selliott@elliottlaw.us>; Bholman@selcsc.org; Tim Rogers <tfrogers@AustinRogersPA.com>; GISSENDANNER, MATTHEW W <MATTHEW.GISSENDANNER@scana.com>; ejones@selcsc.org; Richard Whitt <rlwhitt@austinrogerspa.com>; BURGESS, KENNETH CHAD <chad.burgess@scana.com>; Melchers, Joseph <Joseph.Melchers@psc.sc.gov>; Spearman, James <James.Spearman@psc.sc.gov>
Subject: RE: Docket 2018-2-E - Extension of Time to File Responsive Testimony

***This is an EXTERNAL email from "Butler, David" (David.Butler@psc.sc.gov). Please do not click on a link or open any attachments unless you are confident it is from a trusted source.

In light of SCSBA's and Southern Current's modification of their extension request, it would be helpful if they could discuss the issue with SCE&G, and other parties to seek a possible resolution of the question. Please inform me tomorrow of any progress in this regard, if possible. If no resolution is reached, the Commission will rule on Wednesday.

Thanks,
David Butler

From: Carrie Schurg [<mailto:caschurg@AustinRogersPA.com>]
Sent: Thursday, March 08, 2018 3:41 PM
To: Butler, David <David.Butler@psc.sc.gov>
Cc: Benjamin Mustian <bmustian@willoughbyhoefer.com>; Bateman, Andrew <abateman@regstaff.sc.gov>; Pittman, Jenny <jpittman@regstaff.sc.gov>; alex@shissiaslawfirm.com; Scott Elliott <selliott@elliottlaw.us>; Bholman@selcsc.org; Tim Rogers <tfrogers@AustinRogersPA.com>; Matthew Gissendanner <matthew.gissendanner@scana.com>; ejones@selcsc.org; Richard Whitt <rlwhitt@austinrogerspa.com>; K. Chad Burgess <chad.burgess@scana.com>
Subject: Docket 2018-2-E - Extension of Time to File Responsive Testimony

This email was dictated by Richard Whitt:

David:

This Reply addresses the Company's response to SCSBA's and Southern Current's request for modification of filing timelines in Docket 2018-2-E. SCSBA and Southern Current's reply follows, *seriatim*:

Procedural Posture of Case Relates to the Company's Waiver Request.

A prior Order of this Commission required the Company to update its PR-2 Rate during the month of December, 2017. The Company filed a Waiver Request of that filing on December 22, 2017.

The Company is well aware that its last December PR-2 Rate update filing (December, 2016), lead to intervention and the Company's ultimate abandonment of the Company's proposed December, 2016 PR-2 Rate update. Obviously, had the Company made its December, 2017 PR-2 Rate update filing, as required by a previous Order of this Commission, there would have been intervention and scrutiny of its PR-2 Rate. By the Company moving the PR-2 Rate update into its Fuel case, the Company avoided stand-alone intervention in the PR-2 Rate update filing, as occurred in the Company's December, 2016 PR-2 Rate update.

As is set forth below, the Company's inclusion of the PR-2 Rate update and the Company's changes to its avoided costs methodology, along with the normal fuel case issues, make the thirty day response time for Intervenors unworkable, unfair and constitutes a lack of due process.

Facts Concerning Intervenors' Time to Respond.

- . The Company's filing of Direct Testimony and Exhibits included the **Testimony and Exhibits of seven Witnesses running 172 pages in length.**
- . The Company did not file and serve its Direct Testimony and Exhibits on Intervenors, which was due to be filed with this Commission on February 23, 2018, **until after 5 p.m.,** on that Friday. [Therefore Intervenors were not in receipt of the Company's Direct Testimony and Exhibits until after the close of business on February 23, 2018. With the weekend days following the after business hours filing by the Company on Friday, as a practical matter, **Intervenors did not have access to the 172 pages of Company's Direct Testimony and Exhibits until, sometime on Monday, February 26, 2018.** The filing of the Company's Direct Testimony and Exhibits after the close of business on Friday, precluded Intervenors from having time to review the Company's Direct Testimony and Exhibits on Friday and over the weekend, **thereby depriving the intervenors of three days of response time.**
- . With the Intervenors not having access to the Company's Direct Testimony and Exhibits, until Monday, February 26, 2018, Intervenors would have had to draft and serve their Discovery by the close of business on Friday, **March 2, 2018, which is four days after the date of the Intervenors receipt of the Company's Direct Testimony and Exhibits.**
- . In four days' time after the Intervenors date of receipt of the Company's Direct Testimony and Exhibits, the Intervenors could not reasonably receive and review 172 pages of Direct Testimony and Exhibits and secure the services of an Expert Witness to review the lengthy Direct Testimony and Exhibits of the Company. My client's retained an Expert on March 7, 2018. The

short period of time allowed Intervenor for review and response to (i) the Company's voluminous rate case filing (ii) the Company's "...changes to certain aspects of [the Company's] avoided cost calculation." and (iii) the Company's delayed PR-2 Rate update, is insufficient for due process and an Intervenor's reasonable response.

The Company's Reference to Suspending its PR-2 Rate.

The Company's reference to suspension of the PR-2 Rate would negatively affect solar development in South Carolina and is clearly a punitive suggestion because the Company wishes to have this Commission to decide (i) the Company's fuel case (ii) changes to the Company's avoided costs methodology and (iii) the company's required PR-2 Rate update from December, 2017, without adequate time for Intervenor review and response to the same.

Our Request for Relief.

In the spirit of cooperation, we modify our request for an extension of time to respond to the Company's Direct Testimony and Exhibits, of thirty days extension to the original response date of March 22, 2018, or in the alternative, we request leave to file supplemental Testimony, after we receive responses to our First Request for Production, which will be e-filed and served in the morning.

Regards,
Richard Whitt.

From: Richard Whitt

Sent: Thursday, March 08, 2018 7:32 AM

To: BURGESS, KENNETH CHAD <chad.burgess@scana.com>

Cc: F. David Butler (david.butler@psc.sc.gov) <david.butler@psc.sc.gov>; bmustian@willoughbyhoefer.com; abateman@regstaff.sc.gov; jpittman@regstaff.sc.gov; alex@shissiaslawfirm.com; selliott@elliottlaw.us; Bholman@selcsc.org; Tim Rogers <tfrogers@AustinRogersPA.com>; Carrie Schurg <caschurg@AustinRogersPA.com>; GISENDANNER, MATTHEW W <MATTHEW.GISENDANNER@scana.com>

Subject: Re: Docket 2018-2-E - Extension of Time to File Responsive Testimony

David:

We plan to respond by COB today.

Regards,
Richard Whitt.

Sent from my iPhone - Richard L. Whitt

On Mar 7, 2018, at 5:34 PM, BURGESS, KENNETH CHAD <chad.burgess@scana.com> wrote:

Dear David –

SCE&G is in receipt of the South Carolina Solar Business Alliance, Inc. and Southern Current LLC's (together "Solar Entities") request for a 90 day extension of time to submit its pre-filed direct testimony in the above-referenced docket. For the reasons below, this request should be denied.

As the Commission is aware, the Solar Entities have been past participants in prior fuel dockets, and as past participants they are fully aware of the issues to be addressed in a fuel proceeding. To claim that SCE&G's request for a waiver to adjust its avoided costs in December 2017, is the mechanism by which the Company is injecting "additional issues" in this proceeding is inaccurate. The Commission initiated Docket No. 2018-2-E on October 4, 2017, and in doing so, issued a Notice of Hearing and Prefile Testimony Deadlines ("Notice of Hearing"). By December 15, 2017, SCE&G had timely provided the Commission's Notice of Hearing to all its electric customers and had also caused the Notice of Hearing to be published in newspapers throughout SCE&G's electric service territory. The Notice of Hearing explicitly states that the avoided costs incurred by the Company will be addressed in the fuel proceeding, and the Solar Entities have known for years that SCE&G's avoided costs are set forth in its "Rate Schedule PR-2." And, they have likewise known that SCE&G updates its PR-2 Rate each year during the fuel proceeding. See Dockets No. 2016-2-E and 2017-2-E. Those prior dockets demonstrate that "[t]he issues of the fuel case, plus the PR-2 rate update and avoided costs" are not "too complicated for the existing time frame."

Contrary to the Solar Entities' belief otherwise, the inclusion of avoided costs in this docket is not the result of SCE&G requesting a waiver to update its avoided costs; it is South Carolina law and specifically, Act 236, which requires that avoided costs be addressed in SCE&G's fuel proceeding. The Solar Entities have known since June 2014, that avoided costs will be addressed in SCE&G's annual fuel proceeding. Setting the statute aside, on January 5, 2018, the South Carolina Solar Business Alliance, Inc. opposed SCE&G's December 2017 request for a waiver to update its avoided cost, and on January 24, 2018, the Commission directly addressed SCE&G's request, and the Solar Entities' opposition in Order No. 2018-55. In that order, the Commission ruled that "[c]urrent uncertainties with SCE&G make it appropriate to address [SCE&G's request for a waiver] in the context of the fuel case in April." Moreover, the Solar Entities ignore the fact that the Commission agreed with the suggestion of the Coastal Conservation League, who also opposed SCE&G's waiver request, that SCE&G be required to address its proposed avoided costs in its prefiled testimony in the fuel proceeding. Ironically, the Coastal Conservation League, who strongly supports the Solar Entities' request for more time, appear to have forgotten that the Commission agreed with their suggestion.

With regard to the Solar Entities' claim that they need time to conduct discovery, this argument should be rejected. The Commission informed the public

that any person who wishes to participate in this docket had until January 25, 2018, to file a Petition to Intervene. Southern Current, LLC filed its Petition to Intervene on January 22, 2018, and the South Carolina Business Alliance, Inc. filed its Petition to Intervene on January 23, 2018; they obviously had read and understood the Notice of Hearing. Moreover, the South Carolina Solar Business Alliance (whose membership includes Southern Current) knew by way of Commission Order No. 2018-55 issued on January 25, 2018, that SCE&G would include its updated avoided cost rate in its prefiled testimony. Since that time, the Solar Entities have made no attempt whatsoever to conduct any discovery in this docket. It is their absolute right to not be active in this docket, but to wait until March 7, 2018, and then claim that they need time for discovery when they have made no attempt to conduct discovery is untenable. The Coastal Conservation League's "strong[] support" for the Solar Entities' request appears to be nothing more than their attempt to cure their poor planning in the service of discovery. More specifically, the Coastal Conservation League waited until March 6, 2018, to serve discovery upon SCE&G. By regulation, SCE&G's responses are due March 26, 2018, which is 4 days after the other parties' direct testimony is due. That the Solar Entities and the Coastal Conservation League have either not yet filed discovery or waited until this late date to file discovery is no fault of SCE&G and is not a sufficient basis to support a request for an extension of time.

Lastly, an extension of 90 days would push this proceeding well beyond the date by which SCE&G seeks to have its fuel rates implemented. For years, SCE&G has implemented its new fuel rates beginning with its first billing cycle in May. Again, as past participants, the Solar Entities know that their request is disruptive, and they have not provided an adequate basis for their disruption. Based on the foregoing, SCE&G objects to the Solar Entities' request. But in the event that the Solar Entities' request is granted, then SCE&G respectfully requests that the Commission immediately suspend its existing PR-2 rate and instruct SCE&G to not execute any additional purchase power agreements with solar developers until the Commission issues an order setting SCE&G's avoided costs at an appropriate level.

If you have any questions, please advise.

Chad

From: Carrie Schurg [<mailto:caschurg@AustinRogersPA.com>]
Sent: Wednesday, March 7, 2018 1:37 PM
To: F. David Butler (david.butler@psc.sc.gov) <david.butler@psc.sc.gov>
Cc: BURGESS, KENNETH CHAD <chad.burgess@scana.com>; bmustian@willoughbyhoefer.com; abateman@regstaff.sc.gov; jpittman@regstaff.sc.gov; alex@shissiaslawfirm.com; Richard Whitt <rlwhitt@AustinRogersPA.com>; elliott@elliottlaw.us; Bholman@selcsc.org; Tim Rogers

<tfrogers@AustinRogersPA.com>

Subject: Docket 2018-2-E - Extension of Time to File Responsive Testimony

***This is an EXTERNAL email from Carrie Schurg (caschurg@austinrogerspa.com). Please do not click on a link or open any attachments unless you are confident it is from a trusted source.

This email was dictated by Richard Whitt:

David:

1. We represent the South Carolina Solar Business Alliance, Inc., and Southern Current LLC, in Docket 2018-2-E. I am addressing this request to you, because you have previously issued a Standing Hearing Officer Directive in this Docket.
2. As you know, SCE&G filed its Testimony on February 23, 2018, in Docket 2018-2-E, addressing not only the fuel case, but including the issues of PR-2 rate update and avoided costs. **The inclusion of these two additional issues** were as a result of SCE&G's request for a waiver, filed with this Commission on December 22, 2017.
3. Because these two additional, important issues were included in the Testimony, we are requesting that our March 22, 2018 Testimony deadline to be extended 90 days, or in the alternative, be held in abeyance until the parties have ample time to complete discovery requests and report back to you.
4. The issues of the fuel case, plus the PR-2 rate update and avoided costs, are too complicated for the existing time frame. Also, we need time for discovery requests to the Company, before we file Testimony.
5. All parties are copied hereon. Please advise, and this request is,

Respectfully Submitted,
Richard Whitt,
Timothy F. Rogers,
As Counsel for South Carolina Solar Business Alliance, Inc., and
Southern Current LLC.